

STATE OF MICHIGAN  
COURT OF APPEALS

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DONNA JEAN GRAHAM,  
  
Plaintiff-Appellee,

UNPUBLISHED  
May 15, 2001

v

SHAUN GLEN GRAHAM,  
  
Defendant-Appellant.

No. 222457  
Macomb Circuit Court  
LC No. 97-006482-DM

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Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from the judgment of divorce entered by the circuit court after binding mediation. We decide this appeal without oral argument pursuant to MCR 7.214(E). We reverse.

By stipulated order, the parties submitted “all issues” in this divorce case to binding mediation. One of the hotly contested issues involved the conditions under which defendant would exercise parenting time. Plaintiff requested that the mediator prohibit defendant from having overnight guests of the opposite sex while exercising parenting time with the minor child. The mediator rejected plaintiff’s request, awarding defendant overnight visitations and ruling that “[t]here shall not be any restriction on whom [sic] can be with the Father during the time he has his parenting time or visitation.”

After the mediation award but before entry of the divorce judgment, plaintiff filed an emergency motion requesting the circuit court to prohibit defendant from having overnight guests of the opposite sex while exercising parenting time with the minor child. At the motion hearing, plaintiff’s counsel admitted that the mediator had already ruled on the issue, awarding parenting time to defendant “on an unrestricted basis.” Despite the fact that the parties had agreed to *binding* mediation, plaintiff argued that the circuit court retained the authority to modify the mediator’s decision regarding custody and parenting time. The circuit court agreed and granted plaintiff’s motion. The court ruled that the mediator’s decision regarding property issues was binding, but his decision regarding custody and parenting time was not binding. Because we conclude that the circuit court erred as a matter of law when it attempted to alter the binding mediation award with regard to defendant’s parenting time, we reverse.

Custody disputes may be resolved by binding arbitration. *Dick v Dick*, 210 Mich App 576, 588; 534 NW2d 185 (1995). MCR 3.602(J) provides that an arbitration award may not be set aside unless:

(1) the arbitrator or another is guilty of corruption, fraud, or used other undue means; (2) the arbitrator evidenced partiality, corruption, or misconduct prejudicing a party's rights; (3) the arbitrator exceeded the arbitrator's power; or (4) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear material evidence, or conducted the hearing to prejudice substantially a party's rights. Otherwise, the agreement is to be given broad application. Only limited review by the courts is permitted. [*Dick, supra* at 588-589 (citations omitted).]

Because binding mediation is the functional equivalent of arbitration, and the same rules apply. *Frain v Frain*, 213 Mich App 509, 511; 540 NW2d 741 (1995).

It is true that "the circuit court retains jurisdiction over the child until the child reaches the age of majority." *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000). Further, this Court has held that "the decision of an arbitrator does not prevent a party from seeking to change custody or modify support in the future." *Dick, supra* at 588. However, a circuit court may modify or amend its previous judgments or orders regarding custody disputes only "for proper cause shown or because of a change of circumstances." MCL 722.27(1)(c); MSA 25.312(7)(1)(c). We conclude that a circuit court may modify custody or visitation decisions reached through binding arbitration only upon the same showing.

Plaintiff admitted on the record before the circuit court that the mediator resolved the parenting time issue in defendant's favor. Plaintiff did not argue that the mediator's decision was fraudulent, outside his authority, or influenced by partiality, corruption, or misconduct. Rather, plaintiff simply disagreed with the mediator's decision on moral grounds. Plaintiff essentially took a second bite at the apple, presenting an argument to the circuit court that had been unsuccessful during mediation. The circuit court did not find that a change of circumstances had occurred and did not provide any justification for its decision to change the mediator's award regarding parenting time. The court was without authority to alter the mediator's decision simply because the court would have resolved the dispute in a different manner. "The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the [arbitrator's] award." MCR 3.602(J)(1). Accordingly, we hold that the circuit court erroneously substituted its judgment for that of the mediator, absent the requisite showing of a change in circumstances.

Reversed.

/s/ Gary R. McDonald  
/s/ Michael R. Smolenski  
/s/ Kirsten Frank Kelly